Supreme Court, U.S.
FILED

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In The

Supreme Court of the United States

SHELTON CHAPPELL, MARTHA BOLDEN, RUTHIE MONERO, JACKIE WILLIAMS, PAULA BURNS, individually and as Personal Representative of the Estate of Johnnie Mae Chappell, ALONZO CHAPPELL, and ERNEST CHAPPELL,

Petitioners,

vs.

J.W. RICH, individually, WAYNE M. CHESSMAN, individually, ELMER KATO, individually, JAMES ALEX DAVIS, individually, NATHANIEL GLOVER, Sheriff of Duval County, Florida as successor to Dale Carson, and DALE CARSON, as former Sheriff of Duval County, Florida,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Eleventh Circuit Court of Appeals, by treating the Plaintiffs' Complaint as a "wrongful death" suit, even though there are no counts in the Complaint for "wrongful death", reach a clearly erroneous decision, which is unjust, unreasonable, or plainly wrong?

2. Do the counts in Plaintiffs' Complaint, which contain counts under 42 U.S.C. § 1983 (Count I), under 42 U.S.C. §§ 1985(2)(b) and (3) (Counts III and IV, respectively) serve as tenable predicate claims under *Christopher v. Harbury*, 536 U.S. 403 (2002) to state a claim of "denial of access to the courts" in this case?

3. Does the Florida Statute of Limitations (Fla. Stat. 95.11) bar any count of Plaintiffs' Complaint?

LIST OF PARTIES TO THE PROCEEDING

All parties are listed in the caption. There are no nongovernmental corporations involved in this case.

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OPINIONS BELOW

The Opinion of the Eleventh Circuit Court of Appeals was filed on August 11, 2003 and is reported at 340 F.3d 1279. App. 2-8. The Petition for Rehearing was denied on September 25, 2003. App. 17. The Order Dismissing Plaintiffs' Complaint in the District Court was filed on December 11, 2001. App. 9-15.

JURISDICTION

The Opinion in the Eleventh Circuit Court of Appeals was dated August 11, 2003, and is published at 340 F.3d 1279 (2003). The Order Denying the Petition For Rehearing was dated September 25, 2003. Jurisdiction in this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE[1]

This action arose in the District Court on March 23, 2000 under the Civil Rights Act of 1871, 42 U.S.C. § 1981, 42 U.S.C. § 1983, 42 U.S.C. § 1985, 42 U.S.C. § 1986 and the First, Fifth and Fourteenth Amendments to the U.S. Constitution and the jurisdiction invoked in the District Court was 28 U.S.C. §§ 1331, 1343(a)(1) and 1367. Plaintiffs dropped their counts under 42 U.S.C. § 1981 and 42 U.S.C. § 1986.

[1] The statement of case and the facts are found in App. 2-5, contained in the Opinion of the Eleventh Circuit Court of Appeals, dated August 11, 2003.

The District Court entered its Order dismissing the complaint on December 11, 2001, determining that the Chappell children had failed to state a claim under U.S.C. §§ 1983 and 1985 because they could not establish that they had been denied access to the courts. It noted that the Chappell children knew the identity of the four criminal defendants in 1964 and that no act of the Sheriff's Office interfered with their ability to bring a wrongful death claim against those criminal defendants at that time. In addition, the district court found that the Statute of Limitations barred the Chappell children's claims, because they knew or should have known of those claims and of their injuries within four years of Mrs. Chappell's death. Moreover, the district court concluded that the section 1985 claims against the Sheriff's Office failed under the intracorporate conspiracy doctrine.

The adult children of Johnnie Mae Chappell appealed the district court's dismissal of their complaint asserting constitutional claims under 42 U.S.C. §§ 1983 and 1985. They contended that their cause of action for denial of access to the courts was not time-barred and that their complaint alleges facts sufficient to state a claim.

On appeal, the Chappell children contended first that their cause of action for denial of access to the courts accrued not in 1964 but on March 23, 1996, when Detective Cody first informed them that the Sheriff had hidden the investigative file on the mother's murder. In addition, they argued that the district court erred in finding that they failed to state a claim under sections 1983 and 1985. Finally, they argued that their allegations of a conspiracy

between the four private individuals and the members of the Duval County Sheriff's office defeat the intracorporate conspiracy doctrine.[2]

The jurisdiction in the Eleventh Circuit was invoked pursuant to 28 U.S.C. § 1291. The Opinion in the Eleventh Circuit Court of Appeals was entered on August 11, 2003 and is reported at 340 F.3d 1279 (11th Cir. 2003). The Petition for Rehearing was denied on September 25, 2003.

FACTS

According to the complaint, Johnnie Mae Chappell, an African-American woman, was shot and killed on March 23, 1964, by four white men during a drive-by shooting in a period of racial unrest in Jacksonville, Florida. Following an investigation at the crime scene, no action was taken by the Duval County Sheriff's Office until about August 10, 1964, when two detectives in the Sheriff's Office inadvertently obtained a confession, as well as the murder weapon, from one of the four men while investigating another case. Unable to find any detectives working on the Chappell case, the two detectives, C. Lee Cody and Donald R. Coleman, searched for the investigative file, discovering it underneath the desk chair floor pad in Chief of Detectives J.C. Patrick's office. Detectives Cody and Coleman brought the matter to the attention of Sheriff Dale Carson, who assured them he would look into it. Shortly thereafter, Chief Patrick removed Detectives Cody and Coleman

[2] The Eleventh Circuit did not consider the intracorporate conspiracy doctrine.

from the Chappell murder investigation, and they were reassigned.

In September 1964, J.W. Rich, Elmer Kato, Wayne Chessman, and James Alex Davis were indicted for Mrs. Chappell's murder. Rich was tried separately and convicted of manslaughter. The state then moved for entry of nolle prosequi for Kato, Chessman, and Davis, citing insufficient evidence for trial.

On March 23, 1996, former detective Cody informed members of the Chappell family for the first time about the alleged interference by the Sheriff's Office in the Chappell investigation. The Chappell children filed their complaint on March 23, 2000 against the former and current Sheriffs of Duval County and the four men arrested in connection with their mother's death, alleging deprivation of their civil rights solely because of their race in violation of 42 U.S.C. §§ 1981, 1983, 1985(2) and (3), and 1986. They alleged that the Sheriff's Office obstructed legitimate efforts to investigate Mrs. Chappell's death and conspired with the four criminal defendants to misplace and tamper with evidence, thereby depriving them of among other things, their right of access to the courts to assert an *obstruction of justice claim*[3]. Their ability to assert their claims were prejudiced, they alleged, because they were unaware that the Defendants had tampered with evidence, removed Detectives Cody and Coleman

[3] This statement of facts mirrors the facts in the opinion of the Eleventh Circuit Court of Appeals, with one glaring difference. Plaintiffs have changed the claim from "a wrongful death claim" to "an obstruction of justice claim", which is the heart of plaintiffs claims. This case has never been about wrongful death.

from the investigation, failed to investigate actively Mrs. Chappell's murder, failed to perform ballistics tests on the weapon recovered by the detectives, and failed to enter the murder weapon into evidence at Rich's trial. They also alleged that the conspiracy was ongoing, evidenced in part by the fact that neither the Jacksonville Sheriff's office nor the State Attorney's Office has a file on the Chappell case and that no transcripts of the proceedings have been preserved.[4]

REASONS FOR GRANTING THE WRIT

I. Did the Eleventh Circuit Court of Appeals by treating the Plaintiffs' Complaint as a "wrongful death" suit, even though there are no counts in the Complaint for "wrongful death", reach a clearly erroneous decision, which is unjust, unreasonable or plainly wrong?

Plaintiffs are well advised that the Supreme Court will "rarely" grant review where a lower court has arguably misapplied "a properly stated rule of law". See *Rule 10*, Rules of the Supreme Court of the United States (eff. May 1, 2003).

This case is not about "wrongful death". There are no counts in the Complaint seeking wrongful death.

[4] Subsequent to the events in this case, the Duval County Sheriff's Office merged with the City of Jacksonville Police Department to become the City of Jacksonville Sheriff's Office.

Clearly the Plaintiffs knew that their mother was murdered. They knew about who the perpetrators were and that all four defendants were indicted.

At a Status Conference in the District Court on May 30, 2001, before the Honorable Harvey Schlesinger, the Plaintiffs and the Court discussed the contentions of the Plaintiffs:

> "Mr. Lassiter: Your Honor, we believe . . . there was an intentional attempt to cover up the murder of Johnnie Mae Chappell by the Jacksonville Sheriff's Office. . . . "
>
> "The Court: What rights of the Plaintiffs'?"
>
> "Mr. Lassiter: Judge, the Plaintiffs' access to the courts under Section 1981." App. 27

Again:

> "Mr. Lassiter: Your Honor, if it please the Court, there are many reasons. . . . *But we're not suing for the wrongful death of Johnnie Mae Chappell, nor are we suing for the murder per se. The lawsuit is over the conspiracy to cover up that murder.*" (Emphasis supplied).
>
> "The Court: And what are the damages they've suffered?" App. 28

Again:

> "The Court: Well, you just told me you weren't suing because of the loss of the mother."

"Mr. Lassiter: Your Honor, they were deprived of their access to the courts. . . . "
" . . . If they had known of any conspiracy to cover up the murder in the first place, they would have been able to inquire, through the courts, as to why this occurred."

"The Court: As to what occurred, the murder?"

"Mr. Lassiter: No, sir, the coverup." App. 29.

Clearly the Plaintiffs were *not* pursuing wrongful death and the case was about "cover up" i.e.: obstruction of justice and the conspiracy to obstruct justice. The Court's inquiry as to "the "damages they've suffered" involves the 42 U.S.C. § 1983 claim under loss of parental guidance, emotional distress and like damages.

Perhaps the complaint could have been more artfully drafted to avoid any confusion. But, clearly from the beginning, this case does not involve wrongful death. It is about the obstruction of justice and the conspiracy to obstruct justice.

This Honorable Court has granted certiorari before in cases of where there is doubt about the correctness of the decision of the lower court. *Justice Rehnquist, "Oral Advocacy: A Disappearing Art" 35 Mercer L. Rev.* 1015, 1027 (1984). Further, The Honorable Chief Justice Hughes has been quoted that:

"He was interested in preventing grave miscarriages of justice and occasionally he would recommend the grant of certiorari in a case of no public importance whatever, simply because the decision below was unjust, unreasonable, or plainly wrong." *E. McElwain, The Business of the*

Supreme Court as Conducted by Chief Justice Hughes, 63 HARV. L. REV. 5, 13 (1949).

In *Memphis v. Greene*, 451 U.S. 100, 102 (1981), a civil rights case, certiorari was granted and the judgment below reversed "because the record does not support that holding."

In the Complaint, there is no mention at all of "wrongful death". There is no count founded on wrongful death. No wrongful death action was ever contemplated in this action.

It is beyond cavil, that the two year Statute of Limitations was forever barred after March 23, 1966, 2 years after the homicide. See *Fla. Stat. 95.11(4)(d).*

This case is about obstruction of justice, conspiracy to obstruct justice, loss of parental guidance and emotional distress and access to the courts. The case began, legally, on March 23, 1996. The Eleventh Circuit Court of Appeals simply mis-perceived the thrust of this case.[5]

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[5] When a court mis-perceives the thrust of a case, as in this case, it is usually due to the inability of counsel to convey to the court the complexities of the claim. Here, after the case was briefed but before oral argument had occurred, undersigned counsel had a stroke on October 11, 2002. The stroke affected the speech area of the brain. Oral Argument had been set for December 4, 2002. The Court continued oral argument to June 5, 2003. Approaching oral argument, undersigned counsel felt the need to have able counsel to argue the case on a relatively emergent basis. Able counsel could not possibly know the complexities in this case before oral argument; yet he performed admirably under the circumstances. His Notice of Appearance of Counsel was dated May 16, 2003. Undersigned counsel will undertake all responsibilities in this case henceforth.

Further, the Eleventh Circuit Court of Appeals did not even mention the obstruction of justice and the conspiracy to obstruct justice claims that had ample allegations of fact to serve as tenable predicate claims under *Christopher v. Harbury*, 536 U.S. 403 (2002).

Plaintiffs' Complaint has 3 Counts.[6] Count I deals with loss of security, parental guidance and companionship, interference with family relations, emotional distress and right of access. Count I is grounded upon 42 U.S.C. § 1983.

Count III is grounded on 42 U.S.C. § 1985(2)(b), citing obstruction of justice. The motivating factor in the conspiracy was to injure the right to equal protection under the 14th Amendment. The conspirators acts of misplacing and tampering with evidence and re-assigning the detectives resulted in obstruction of the legitimate efforts to vindicate the death of Johnnie Mae Chappell by interfering with due process and right to access to courts. As a result of the conspirators' actions, the Plaintiffs lost parental guidance and due process.

Count IV is grounded on 42 U.S.C. § 1985(3), conspiracy to obstruct justice. The conspirators deprived plaintiffs of the rights and privileges by causing the death of Johnnie Mae Chappell and then furthering the conspiracy by tampering with evidence and obstructing justice and removing the detectives from the case. Plaintiffs recite that the conspirators are the proximate cause of the loss of

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[6] Plaintiffs dismissed Counts II (under 42 U.S.C. § 1981) and V (under 42 U.S.C. § 1986) in the District Court.

parental society and companionship, infliction of emotional distress and denial of access.

Throughout this Complaint the plaintiffs re-iterate the loss of parental society, companionship security and guidance, interference with family relations and emotional distress. These allegations of damages are not due to any "wrongful death" claim; rather these damages stem from the discovery of the obstruction of justice (i.e. "coverup") when plaintiffs were told by former Detective Lee Cody on March 23, 1996, that the coverup had occurred. As a result of this newly discovered revelation, all of the emotions that the children suffered in the past was brought to the forefront of their emotions to be re-lived again as adults. They suffer an aggravation of pre-existing mental and emotional/psychologic damages that stem from the death of their mother, initially, and on March 23, 1996, their feelings were once again damaged by discovery of the "coverup" that occurred 36 years earlier in the 1964 investigation.

This case is about obstruction of justice – not wrongful death.

II. Do the counts in Plaintiffs' Complaint, which contain counts under 42 U.S.C. § 1983 (Count I), under 42 U.S.C. §§ 1985(2)(b) and (3) (Count III and IV, respectively) serve as tenable predicate claims under *Christopher v. Harbury*, 536 U.S. 403 (2002) to state a claim of "denial of access to the courts" in this case?

Access to the courts is clearly a constitutional right, grounded in the First Amendment, the Article IV Privileges and Immunities Clause, the Fifth Amendment and/or

the Fourteenth Amendment. *Harbury*, 536 at 415 n.12 (noting the Supreme Court's past reliance on all of these bases); *see also Bank of Jackson County v. Cherry*, 980 F.2d 1362, 1370 (11th Cir. 1993) (grounding the right of access to courts in the First Amendment). In *Ryland v. Shapiro*, 708 F.2d 967, 972 (5th Cir. 1983), the court observed that to pass constitutional muster, access to the courts must be more than merely formal; it must also be adequate, effective, and meaningful. *cf Bounds v. Smith*, 430 U.S. 817, 822 (1977).

In Bell v. Milwaukee, 746 F.2d 1205, 1261 (7th Cir. 1984), the Seventh Circuit observed that to deny access to the courts,

> "defendants need not literally bar the courthouse door or attack plaintiffs' witnesses. This constitutional right is lost where, as here, police officials shield from the public and the victim's family key facts which would form the basis of the family's claim for redress. A contrary interpretation of this right to due process would encourage police officials to conceal the circumstances relating to unlawful killings committed under color of state law and other deprivations of federal rights which Section 1983 was designed to remedy."

Interference with the right of court access by state agents who intentionally conceal the true facts about a crime may be actionable as a deprivation of constitutional rights under 42 U.S.C. § 1983 and 1985. *Flores v. Satz*, 137 F.3d 1275, 1278 n.7 (11th Cir. 1998).

Clearly, the right of access to the courts is constitutional in nature. Therefore *Harbury* allowed us to pave the way to set up tenable predicate claims to allow us access to

the courts. Bear in mind, Plaintiffs' Complaint was filed before *Harbury* was decided.

> "Hence the need for care in requiring that the predicate claim be described well enough to apply the "non-frivolous" test and to show that the "arguable nature of the underlying claim is more than hope" *Christopher v. Harbury*, 536 U.S. 403 (2002).

In the case at bar, if the Eleventh Circuit substituted "obstruction of justice" (42 U.S.C. § 1985(2)) instead of "wrongful death", as a predicate claim (together with the counts on conspiracy to obstruct justice, (42 U.S.C. § 1985(2)), and the parental guidance and emotional distress count under 42 U.S.C. § 1983, as predicate claims, the case would be decided differently, hopefully, because there are numerous allegations in the complaint that describe obstruction of justice, which are related herewith:

1. No action was taken between March 23, 1964 and August 10, 1964;
2. No detectives were assigned to investigate the case;
3. The investigative "file" was secreted under a desk chair floor pad in the office of the Chief of Detectives;
4. The sheriff was informed of the secretion of the file;
5. The detectives were reprimanded;
6. The detectives were re-assigned out of the detective division;

7. Three of the four defendants were "nol-prossed" citing "lack of evidence" although they were indicted for first degree murder;

8. Tampering with evidence;

9. Failed to actively investigate the case;

10. No ballistics was performed on the murder weapon;

11. The murder weapon was not entered into evidence;

12. The sheriff's office file has been "lost";

13. The state attorney's office has no file;

14. No transcripts were recovered;

At this stage of the case, at a dismissal of the complaint, there were substantial allegations to suffice in supporting a claim for access to the courts.

Once again, Plaintiffs' Complaint does not contain a count for wrongful death. Wrongful death claims were ancient news in the context of this factual scenario. The Statute of Limitations for wrongful death had long passed. It was the discovery of the obstruction of justice (i.e., "The coverup" by the police) that started the clock ticking on the *four year* Statute of Limitations on March 23, 1996. Suit was filed on March 23, 2000. See: *Mullinax v. McElhenny*, 817 F.2d 711, 716 (11th Cir. 1987).

Plaintiffs cannot stress enough that this case is before the court on a Dismissal of a Complaint with no count or claim for wrongful death.

III. Does the Florida Statute of Limitations (Fla. Stat. 95.11) bar any count of Plaintiffs' Complaint.

Because the Eleventh Circuit Court of Appeals treated this case as a "wrongful death" suit, the correct Statute of Limitations under Florida law for wrongful death would be 2 years from the date of the "wrongful death". *See F.S. 95.11.* As the Eleventh Circuit found, everyone knew the Plaintiffs' mother was killed by homicide on March 23, 1964. Whether the widower, Willie Chappell, would have had any *meaningful* redress for wrongful death, we'll never know. The fact is, the Statute of Limitations expired on March 23, 1966 for wrongful death and was forever barred thereafter.

But, no one, either the widower, the children, or anyone else (other than the "co-conspirators") knew of the "coverup" other than Detectives Cody and Coleman. The Plaintiffs first knew on March 23, 1996, that former Detective Lee Cody had revealed to them the "coverup" (i.e., the obstruction of justice). The suit was filed on the last day of the four year Statute of Limitations under Florida Law, March 23, 2000. A cause of action under § 1983 and § 1985 will not accrue, and thereby set the limitations clock running, until the plaintiffs know or should know that they have suffered the injury that forms the basis of their complaint and who has inflicted the injury. *Mullinax v. McElhenny*, 817 F.2d 711, 716 (11th Cir 1987). Florida's four-year Statute of Limitations applies to claims of deprivation of rights under 42 U.S.C. § 1983 and § 1985. *City of Hialeah v. Rojas*, 311 F.3d 1096, 1102 n.2 (11th Cir. 2002) *cf. Newberger v. U.S. Marshal Serv.*, 751 F.2d 1162, 1166 (11th Cir. 1985).

Under *Harbury*, denial of access is an ancillary, requiring that Plaintiffs also plead a substantive underlying claim. See *Harbury*, 536 U.S. at 415. The statute of limitations for denial of access begins to run only when the Plaintiffs knew or should have known that they have suffered injury to their right of access and who caused it. (*Chappell v. Rich*, 340 F.3d 1279, 1283 (11th Cir. 2003).

Accordingly, Plaintiffs' claims are not barred by the Statute of Limitations.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 02-10200

D.C. Docket No. 00-00313-CV-3-J-20A

SHELTON CHAPPELL,
MARTHA BOLDEN,
RUTHIE MONTERO,
JACKIE WILLIAMS,
PAULA BURNS,
all individually and as Personal
Representatives of the Estate of
Johnnie Mae Chappell,
ALONZO CHAPPELL,
ERNEST CHAPPELL,

Plaintiffs-Appellants,

versus

J. W. RICH,
WAYNE M. CHESSMAN,
ELMER KATO,
JAMES ALEX DAVIS,
all individually,
NATHANIEL GLOVER,
Sheriff of Duval County, Florida
as successor to
Dale Carson,
DALE CARSON,
as former Sheriff of Duval
County, Florida,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(August 11, 2003)

Before BARKETT, MARCUS and ALARCON*, Circuit Judges.

PER CURIAM:

The adult children of Johnnie Mae Chappell ("Chappell children") appeal the district court's dismissal of their complaint asserting constitutional claims under 42 U.S.C. §§ 1983 and 1985. They contend that their cause of action for denial of access to the courts is not time-barred and that their complaint alleges facts sufficient to state a claim.

According to the complaint, Johnnie Mae Chappell, an African-American woman, was shot and killed on March 23, 1964, by four white men during a drive-by shooting in a period of racial unrest in Jacksonville, Florida. Following an investigation at the crime scene, no action was taken by the Duval County Sheriff's Office until about August 10, 1964, when two detectives in the Sheriff's Office inadvertently obtained a confession, as well as the murder weapon, from one of the four men while investigating another case. Unable to find any detectives working on the Chappell case, the two detectives, C. Lee Cody and Donald R. Coleman, searched for the investigative file, discovering it underneath the desk chair floor pad in Chief of Detectives J.C. Patrick's office. Detectives Cody and Coleman

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* Honorable Arthur L. Alarcon, United States Circuit Judge for the Ninth Circuit, sitting by designation.

brought the matter to the attention of Sheriff Dale Carson, who assured them he would look into it. Shortly thereafter, Chief Patrick removed Detectives Cody and Coleman from the Chappell murder investigation, and they were reassigned.

In September 1964, J.W. Rich, Elmer Kato, Wayne Chessman, and James Alex Davis were indicted for Mrs. Chappell's murder. Rich was tried separately and convicted of manslaughter. The state then moved for entry of *nolle prosequi* for Kato, Chessman, and Davis, citing insufficient evidence for trial.

On March 23, 1996, former detective Cody informed members of the Chappell family for the first time about the alleged interference by the Sheriff's Office in the Chappell investigation. The Chappell children filed their complaint on March 23, 2000 against the former and current Sheriffs of Duval County and the four men arrested in connection with their mother's death, alleging deprivation of their civil rights solely because of their race in violation of 42 U.S.C. §§ 1981, 1983, 1985(2) and (3), and 1986. They alleged that the Sheriff's Office obstructed legitimate efforts to investigate Mrs. Chappell's death and conspired with the four criminal defendants to misplace and tamper with evidence, thereby depriving them of, among other things, their right of access to the courts to assert a wrongful death claim. Their ability to assert their claims was prejudiced, they alleged, because they were unaware that the Defendants had tampered with evidence, removed Detectives Cody and Coleman from the investigation, failed to investigate actively Mrs. Chappell's murder, failed to perform ballistics tests on the weapon recovered by the detectives, and failed to enter the murder weapon into evidence at Rich's trial. They also alleged that

the conspiracy was ongoing, evidenced in part by the fact that neither the Jacksonville Sheriff's Office nor the State Attorney's Office has a file on the Chappell case and that no transcripts of the proceedings have been preserved.[1]

The district court granted the Defendants' motion to dismiss, determining that the Chappell children had failed to state a claim under 42 U.S.C. §§ 1983 and 1985 because they could not establish that they had been denied access to the courts. It noted that the Chappell children knew the identity of the four criminal defendants in 1964 and that no act of the Sheriff's Office interfered with their ability to bring a wrongful death claim against those criminal defendants at that time. In addition, the district court found that the statute of limitations barred the Chappell children's claims, because they knew or should have known of those claims and of their injuries within four years of Mrs. Chappell's death. Moreover, the district court concluded that the section 1985 claims against the Sheriff's Office failed under the intracorporate conspiracy doctrine.

On appeal, the Chappell children contend first that their cause of action for denial of access to the courts accrued not in 1964 but on March 23, 1996, when Detective Cody first informed them that the Sheriff had hidden the investigative file on their mother's murder. In addition, they argue that the district court erred in finding that they failed to state a claim under sections 1983 and

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[1] Subsequent to the events in this case, the Duval County Sheriff's Office merged with the City of Jacksonville Police Department to become the City of Jacksonville Sheriff's Office.

1985. Finally, they argue that their allegations of a conspiracy between the four private individuals and the members of the Duval County Sheriff's Office defeat the intracorporate conspiracy doctrine.

We review the dismissal of a complaint for failure to state a claim *de novo,* applying the same standard as the district court. *Lotierzo v. Woman's World Med. Ctr., Inc.,* 278 F.3d 1180, 1182 (11th Cir. 2002). We must accept the allegations set forth in the complaint as true for the purposes of a motion to dismiss. *Id.*

DISCUSSION

Access to the courts is clearly a constitutional right, grounded in the First Amendment, the Article IV Privileges and Immunities Clause, the Fifth Amendment, and/or the Fourteenth Amendment. *Christopher v. Harbury,* 536 U.S. 403, 415 n.12 (2002) (noting the Supreme Court's past reliance on all of these bases); *see also Bank of Jackson County v. Cherry,* 980 F.2d 1362, 1370 (11th Cir. 1993) (grounding the right of access to courts in the First Amendment). To pass constitutional muster, access to the courts must be more than merely formal; it must also be adequate, effective, and meaningful. *Ryland v. Shapiro,* 708 F.2d 967, 972 (5th Cir. 1983) (citing *Bounds v. Smith,* 430 U.S. 817, 822 (1977)). In *Bell v. Milwaukee,* the Seventh Circuit observed that to deny access to the courts,

> defendants need not literally bar the courthouse door or attack plaintiffs' witnesses. This constitutional right is lost where, as here, police officials shield from the public and the victim's family key facts which would form the basis of the family's claims for redress. A contrary interpretation of the right to due process would encourage police

> officials to conceal the circumstances relating to unlawful killings committed under color of state law and other deprivations of federal rights which Section 1983 was designed to remedy.

746 F.2d 1205, 1261 (7th Cir. 1984). Thus, interference with the right of court access by state agents who intentionally conceal the true facts about a crime may be actionable as a deprivation of constitutional rights under 42 U.S.C. §§ 1983 and 1985. *See Flores v. Satz,* 137 F.3d 1275, 1278 n.7 (11th Cir. 1998) (distinguishing between officials who intentionally conceal facts and those who fail to investigate fully); *Ryland,* 708 F.2d at 973 (allegation "that agents of the state intentionally engaged in conduct that interfered with [the plaintiffs'] exercise of their constitutionally protected right to institute a wrongful death suit" offered a valid theory of recovery).

Florida's four-year statute of limitations applies to such claims of deprivation of rights under 42 U.S.C. §§ 1983 and 1985. *See City of Hialeah v. Rojas,* 311 F.3d 1096, 1102 n.2 (11th Cir. 2002) ("Section 1983 claims are governed by the forum state's residual personal injury statute of limitations, which in Florida is four years"); *Newberger v. U.S. Marshal Serv.,* 751 F.2d 1162, 1166 (11th Cir. 1985) (applying the four-year intentional tort statute of limitations to section 1985 claims of conspiracy). A cause of action under these sections will not accrue, and thereby set the limitations clock running, until the plaintiffs know or should know (1) that they have suffered the injury that forms the basis of their complaint and (2) who has inflicted the injury. *See Mullinax v. McElhenny,* 817 F.2d 711, 716 (11th Cir. 1987).

Thus, although denial of access is an ancillary claim, requiring that plaintiffs also plead a substantive underlying claim, *see Harbury,* 536 U.S. at 415, the statute of limitations for denial of access may be different than that of the underlying claim, beginning to run only when the plaintiffs knew or should have known that they have suffered injury to their right of access and who caused it. The Chappell children argue that in this case their allegations reflect that they did not know or could not have known of their denial of access to the courts a result of the actions of the Sheriff's Office to conceal information until 1996.

However, when we examine the allegations of the complaint here, we conclude that they are insufficient to support the claim, and because there is no denial of access claim, its statute of limitations period is moot. The Chappell children knew that their mother had been murdered, who the alleged perpetrators were, and that Rich had been convicted of manslaughter for this killing before the statute of limitations for a wrongful death suit expired. *Cf. Paige v. Police Dep't of the City of Schenectady,* 264 F.3d 197, 199-200 (2d Cir. 2001) (finding that, despite a police cover-up, the plaintiff had enough information to bring an assault claim before the statute of limitations expired). Although access to the concealed evidence might have strengthened their case, the Chappell children do not allege that they were or would have been prevented from filing a wrongful death suit within the statute of limitations period, nor that the Defendants' actions would have made such a suit inadequate, ineffective, or not meaningful.

This case is thus unlike the circumstances in *Ryland v. Shapiro,* 708 F.2d 967, or *Bell v. Milwaukee,* 746 F.2d

1205, in which the plaintiffs successfully alleged denial of access to the courts. In *Ryland,* Lavonna Ryland's parents did not know that a crime had been committed because the police had concealed their daughter's murder as a suicide. Likewise, in *Bell,* the family's attempt to seek redress for Daniel Bell's wrongful death was thwarted by the false police representation that the Bell shooting was in self-defense.

In this case, the tragic death of Johnnie Mae Chappell and the inexcusable conduct of the Defendants, as alleged, are sad reminders of the damage done to the integrity of our justice system and to our society by racial hatred and strife. However, based on the foregoing discussion, we cannot find that the facts alleged here are sufficient to constitute a violation of the right of access to the courts. Therefore, we agree with the district court that the Chappell children have failed to state a claim for denial of the right of access to the courts under sections 1983 and 1985. As a result, we do not need to reach the question of whether the intracorporate conspiracy doctrine would bar the conspiracy claim under section 1985. We thus AFFIRM the district court's dismissal of the Chappell children's section 1983 and 1985 claims.

AFFIRMED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

SHELTON CHAPPELL, etc.,

Plaintiffs,

vs.

J.W. RICH, etc.,

Defendants.

_____/

Case No.
3:00-cv-313-J-20HTS

ORDER

(Filed Dec. 11, 2001)

This case is before the Court on Defendant Chessman's Motion to Dismiss (Doc. No. 7, filed June 19, 2001) and Defendant Glover's Motion to Dismiss Counts I-IV (Doc. No. 14, filed July 26, 2001).

Background

The initial facts in this case arose in March of 1964 and are not in dispute. On March 23, 1964, Johnnie Mae Chappell was shot and killed by four men in a drive-by shooting. Mrs. Cappell was African American and the men in the car were white. Five months later, in August of 1964, the four men in the car were arrested for the murder of Mrs. Chappell. They were J.W. Rich, Elmer Kato, Wayne M. Chessman, and James Alex Davis. On September 25, 1964, the Grand Jury returned an indictment as to all four defendants charging them with Murder in the First Degree. Rich was charged with shooting Mrs. Chappell and the other three were charged with aiding and abetting.

Rich was tried separately on November 30, 1964 and the jury returned a verdict of guilty as to manslaughter. Rich was sentenced to ten years in state prison. The other three defendants were not prosecuted because the State moved for entry of *nolle prosequi*, meaning that the State concluded they did not have sufficient evidence to prosecute the remaining defendants.

After the death of their mother, the six Chappell children were unable to continue living with their father so they were split up and sent to various family members' homes or foster homes.

On March 23, 1996, the Plaintiffs became aware that an alleged conspiracy in the Duval County Sheriff's Department may have prevented the Department from conducting a full and complete investigation into the death of Mrs. Chappell. At the 36th year Memorial Reunion for Mrs. Chappell, an ex-Duval County Detective, Lee Cody, told the Chappell family that the Sheriff's Department did not use all the evidence it had available to it in its prosecution of the defendants and that the Department secreted other evidence. However, no allegation was made that any "state actor" was involved in the underlying murder.

Plaintiffs' Claims

Plaintiffs have essentially brought three claims against the defendants. The first is a 42 U.S.C. § 1983 claim for the deprivation of the Plaintiffs' civil rights by the Duval County Sheriff's Department. Specifically, they allege that they were deprived access to the courts and their parent/child relationship under the Due Process Clause. Plaintiffs also brought a claim under 42 U.S.C. § 1981. But this claim merges with the § 1983 claim. *Butts*

v. County of Volusia, 222 F.3d 891 (11th Cir. 2000) (§ 1983 provides the sole cause of action against state actors for violations of § 1981.)

Plaintiffs remaining two claims are brought under 42 U.S.C. § 1985(2) and (3). § 1985(2) prohibits persons from conspiring for the purpose of obstructing justice with the intent to deny any citizen the equal protection of the laws. Plaintiffs allege that the defendants obstructed justice when the Sheriff's Office misplaced and/or tampered with evidence and ordered Detectives Cody and Coleman to stop investigating the death of Mrs. Chappell. They further claim that these actions violated their Equal Protection rights by denying them their right to the parent/child relationship with their mother. § 1985(3) prohibits a conspiracy for the purpose of denying any person equal privileges and immunities under the laws.

Plaintiffs' § 1983 claim fails because they do not present an underlying claim for which § 1983 can grant relief. § 1983 by itself does not create a cause of action. It only protects those who have had their constitutional treaty or statutory rights violated by a state officer. The Plaintiffs claim that they have been denied the equal protection of the laws by being denied access to the courts because of their race. Being denied access to the courts is a constitutional violation but Plaintiffs here have not been denied access to the courts. Plaintiffs claim that because the Sheriff's Department did not fully investigate the death of Mrs. Chappell and because three of the criminal defendants were not convicted that the Plaintiffs were unable to bring a claim against the four criminal defendants in a civil lawsuit. But there is no constitutional requirement that the Sheriff's Department investigate crimes. *Andrews v. Fowler*, 98 F.3d 1069, 1078-79 (8th Cir.

1996). Even if Plaintiffs' allegations are taken as true and the Sheriff's Department did not fully investigate or prosecute the criminal defendants, no constitutional right of Plaintiffs with respect to their access to courts can now be brought. Plaintiffs knew who the four criminal defendants were because they had been identified and charged with the crime. No action on the part of the Sheriff's Department interfered with Plaintiffs' ability to prosecute that claim in civil court. More importantly no constitutional right exists to have the executive branch of government investigate or prosecute a criminal case so someone can gain or use information therefrom to file or prosecute a civil case.

Plaintiffs' § 1985(2) and (3) claims also fail under similar reasoning. Plaintiffs have alleged two separate conspiracies. First, there was the conspiracy among Defendants Kato, Chessman, Davis, and Rich to kill Mrs. Chappell. Then there was an alleged conspiracy within the Duval County Sheriff's Department to cover up the killing. Neither alleged conspiracy violated § 1985. For there to be a violation of § 1985, the Defendants must have conspired to deprive the Plaintiffs of the equal protection of the laws by depriving them of their parent/child relationship because of their race. Just as there was no constitutional violation under the §1983 claim, neither is there a constitutional violation under § 1985. Plaintiffs allege that their Due Process rights were violated and that they were denied the Equal Protection of the laws. Their Due Process rights would be their access to the courts and it has already been shown that those rights were not violated because no one denied the Plaintiffs access to the courts and there was no constitutional violation. And their Equal

Protection rights were not violated by the Sheriff's Department because any constitutional deprivation of the parent/child relationship based on race was known to them when Mrs. Chappell was murdered. Therefore, Plaintiffs have failed to state a claim upon which relief can be granted.

Even if Plaintiffs had a cause of action under any of their claims, the statute of limitations has run on those claims. The state statute of limitations for personal injury actions applies to the claims at hand. Chapter 95.11 of the Florida Statutes (1999) states that personal injury actions must be brought within four years. When determining if a tolling mechanism applies to these claims, the Court should apply federal law. Plaintiffs cause of action in this case did not arise until they knew or should have known that they were injured. *Mullinax v. McElhenney*, 817 F.2d 711, 716 (11th Cir. 1987). The issue in this case is whether Plaintiffs knew or should have known of their injury when Mrs. Chappell was killed. Plaintiffs claim that they could not have known of their legal claims due to the actions of the Sheriff's Department. Even if Plaintiffs' allegations regarding the Sheriff's Department are taken as true, they still knew of their claims in 1964. They knew that Mrs. Chappell had been allegedly murdered by four men and they knew who those four men were because they had been identified and charged with the crime. They knew within four years of the killing that the children would have to be split up and that Mr. Chappell would be unable to raise them himself. Any interference with the parent/child relationship occurred at that time and the four criminal defendants were the ones who could be sued under that claim. No action on the part of the Sheriff's Department interfered with Plaintiffs' ability to prosecute

that claim in a civil lawsuit. The Sheriff's Department were not the ones who interfered with the parent/child relationship. If anyone did, it may have been the four original criminal defendants. In addition, Plaintiffs had access to the civil courts in 1964 to bring their claims against the four original criminal defendants. Plaintiffs have made no allegations that the Sheriff's Department barred them from filing suit or in any way interfered with their ability to sue those four defendants.

Plaintiffs' allegations against the Sheriff's Department in reference to covering up the investigation had no effect on their ability to file an proceed with a civil suit against the four criminal defendants. Because their § 1983 claims clearly existed in 1964 and the Sheriff's Department did not prevent them from knowing of or filing those claims, the statute of limitations has run on the claims and they must be dismissed.

As to the Plaintiffs' § 1983 claim against the Sheriff in his official capacity for interfering with the parent/child relationship, the Court is not persuaded by case law from other Circuits. There is no case law in the Eleventh Circuit at this time recognizing a constitutional claim for interference with the parent/child relationship under similar facts and allegations and this Court declines to be the first to recognize such a cause of action. Even the cases that Plaintiffs cite from other Circuits that do recognize a cause of action for the interference with the parent/child relationship arose where a state actor was the murderer. But Plaintiffs do not contend that the state played any role in the murder of Mrs. Chappell, only that the state attempted to cover up the murder. Therefore, the state cannot be held responsible for the disruption of the parent/child relationship.

The § 1985 claims fail as to Defendants Kato, Chessman, Davis, and Rich on statute of limitations grounds as well. If Plaintiffs had a claim against these Defendants, then the Plaintiffs knew of the conspiracy in 1964 when the killing took place and could have filed suit at that time.

In addition, the § 1985 claims fail as to the Sheriff's Department because of the intracorporate conspiracy doctrine. This doctrine states that employees within the same public entity are considered one actor. *Dickerson v. Alachua County Comm'*, 200 F.3d 761 (11th Cir. 2000). A conspiracy requires more than one actor. Since an actor cannot conspire with him or herself, there is no conspiracy. Without a conspiracy, there is no violation of § 1985.

For these reasons, Defendants' Motions are **GRANTED** and the case is **DISMISSED**. The clerk shall close the file.

DONE AND ENTERED at Jacksonville, Florida, this 10th day of December 2001.

/s/ Harvey E. Schlesinger
HARVEY E. SCHLESINGER
United States District Judge

Copies to:
John R. Jolly, Jr. Esq.
William T. Lassiter, Esq.
Garry Randolph
Law Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 2-10200-JJ

SHELTON CHAPPELL,
MARTHA BOLDEN, et. al., Plaintiffs-Appellants,

versus

J.W. RICH,
WAYNE M. CHESSMAN, et. al., Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of Florida

(Filed Sep. 25, 2003)

BEFORE: BARKETT, MARCUS and ALARCON*, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by Appellants is DENIED.

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* Honorable Arthur L. Alarcon, United States Circuit Judge for the Ninth Circuit, sitting by designation.

ENTERED FOR THE COURT:

/s/ Rosemary Barkett
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

SHELTON CHAPPELL, MARTHA BOLDEN, RUTHIE MONTERO, JACKIE WILLIAMS, PAULA BURNS, Individually and as Personal Representative of the Estate of Johnnie Mae Chappell, ALONZO CHAPPELL, and ERNEST CHAPPELL,

Plaintiffs,

v.

CASE NUMBER:

3:00-CV-313-J-20A

J. W. RICH, individually, WAYNE M. CHESSMAN, individually, ELMER KATO, individually, JAMES ALEX DAVIS, individually NATHANIEL GLOVER, SHERIFF OF DUVAL COUNTY, FLORIDA as successor to DALE CARSON, and DALE CARSON, individually, and as former SHERIFF OF DUVAL COUNTY, FLORIDA,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

* * *

COUNT I

42 USC SECTION 1983

33. Plaintiffs reaffirm and reallege the General allegations contained in paragraphs 1 through 32 as if fully set forth herein.

34. This count is brought against Defendants J.W. Rich, individually, Elmer Kato, individually, Wayne M. Chessman, individually, and James Alex Davis, individually, Dale Carson, individually and as former Sheriff of Duval County, Florida, and Nathaniel Glover as Sheriff of Duval County, Florida and successor to Dale Carson.

35. The aforesaid Defendants, at all times material hereto, acted under color of state and/or local law.

36. Defendant, Dale Carson, individually and as former Sheriff had a policy, custom or practice on his own behalf and/or through his deputy, Chief of Detectives J.C. Patrick, and/or Sheriff Carson and Chief Patrick had a policy, custom, or usage of deliberate indifference towards the rights of Plaintiffs solely because of their race or color.

37. As a direct and proximate result of the conduct of the Defendants as aforesaid, Plaintiffs suffered loss of security, companionship, and parental guidance of Johnnie Mae Chappell, emotional distress, interference with family relations, deprivation of their right to access to the Courts, humiliation and indignity, and other deprivation under the law.

WHEREFORE, Plaintiffs demand judgment for damages against the Defendants, J.W. Rich, Elmer Kato, James Alex Davis, Wayne M. Chessman, Dale Carson, and Nathaniel Glover, jointly and severally, for punitive damages, the costs of this action, attorneys' fees, and such and other relief as may be just and equitable in the premises.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all issues so triable in this cause.

COUNT II

TITLE 42 USC SECTION 1981

38. The Plaintiffs, Paula Burns both individually and as Personal Representative of the Estate of Johnnie Mae Chappell, as well as Martha Bolden, Ruthie Montero, Jackie Williams, Kathy Walker, Willie Chappell, Alonzo Chappell, Gregory Chappell, Ernest Chappell and Shelton Chappell reallage paragraphs 1 through 32 of the General Allegations as if fully set forth herein.

* * *

WHEREFORE, Paula Burns both individually and as Personal Representative of the Estate of Johnnie Mae Chappell, Martha Bolden, Ruthie Montero, Jackie Williams, Willie Chappell, Alonzo Chappell, Ernest Chappell and Shelton Chappell demand judgment against the Defendants Wayne M. Chessman, Elmer Cato, J. W. Rich, James Alex Davis, Dale Carson, individually and in his official capacity as former Sheriff of Duval County, Florida, and Sheriff Nathaniel Glover in his official capacity as Sheriff of Duval County, Florida, for punitive damages, the costs of this action, attorneys' fees, and such and other relief as may be just and equitable in the premises.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all issues so triable in this cause.

COUNT III

TITLE 42 USC 1985, PARAGRAPH 2[2]

40. The Plaintiffs reallage paragraphs 1 through 32 of the General Allegations as is fully set forth herein.

41. The Plaintiffs are entitled to relief from the Defendants upon the following facts:

(a) Title 42 USC Section 1985 paragraph 2 protects against "two or more persons who conspired for the purpose of impeding, hindering, obstructing, or defeating", "the due course of justice in any state", "with intent to deny any to any citizen the equal protection of the laws."

(b) Plaintiffs are African American members of the protective class of citizens said law was designed to protect.

(c) The motivating factor in the conspiracy to restrict and/or injure the Plaintiffs' right to equal protection under the Fourteenth Amendment was Plaintiffs' race and color.

(d) Plaintiffs have the constitutionally protected right of judicial redress, in that Plaintiffs could vindicate the death of Johnnie Mae Chappell through civil judicial action or otherwise.

(e) Conspirator's actions of misplacing and/or tampering with evidence, as well as, ordering Duval County Sheriff's Office's Detectives C. Lee Cody and Donald Ray Coleman off of the active and ongoing investigation of the murder of Johnnie Mae Chappell, obstructed legitimate efforts to vindicate the death of Johnny [sic]

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Mae Chappell through judicial redress, by interfering with the due process right of access to courts.

(f) Said acts of the conspiracy, were the direct and proximate cause of damages suffered by the Plaintiffs including loss of society and companionship of Johnnie Mae Chappell to all of her children herein mentioned and deprivations of due process and racial equality to the Estate of Johnnie Mae Chappell.

WHEREFORE, Paula Burns both individually and as Personal Representative of the Estate of Johnnie Mae Chappell, Alonzo Chappell, Martha Bowen [sic], Ruthie Montero, Jackie Williams, Ernest Chappell and Shelton Chappell demand judgment against the Defendants Wayne M. Chessman, Elmer Cato, J. W. Rich, James Alex Davis, Dale Carson, individually and in his former capacity as Sheriff of Duval County, Florida and Nathaniel Glover in his official capacity as Sheriff of Duval County, Florida, and successor of former Sheriff Dale Carson, for punitive damages, and costs of this action, attorneys' fees, and such and other relief as may be just and equitable in the premises.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all issues so triable in this cause.

COUNT IV

TITLE 42 USC 1985(3)

42. The Plaintiffs reallege paragraphs 1 through 32 of the General Allegations as is fully set forth herein.

43. The Plaintiffs are entitled to relief against the Defendants upon the following facts:

(a) Title 42 USC Section 1985(3) protects certain classes of Plaintiffs from conspiracies which would deprive Plaintiffs of their constitutionally guaranteed equal rights and/or equal protection and immunities under the law.

(b) Plaintiffs are African American members of one of the protective classes under Title 42 USC 1985(3).

(c) The above-mentioned conspiracy was motivated to deprive the Plaintiffs of their constitutionally protected rights of equal protection and immunities and/or equal rights under the First and/or Fourteenth Amendment due to Plaintiffs race and color.

(d) The Plaintiffs have the right of equal protection and immunities as well as equal rights under the Fourteenth and First Amendments.

(e) Said conspirators, through the aforesaid acts of conspiracy, sought to deprive Plaintiffs of said rights and privileges guaranteed to Plaintiffs by causing the death of Johnnie Mae Chappell and then furthering the conspiracy by tampering with evidence and obstructing justice, as well as removing Duval County Sheriff's Detectives C. Lee Cody and Donald Ray Coleman from their ongoing police investigation of the death of Johnnie Mae Chappell.

(f) Said ongoing conspiracy is the direct and proximate cause of the Plaintiffs' damages and injuries including loss of society and companionship of Johnnie Mae Chappell to all of her children herein mentioned, infliction of emotional distress, denial of access to the

Courts and other deprivations of due process and racial equality to the Estate of Johnnie Mae Chappell.

WHEREFORE, Paula Burns both individually and as Personal Representative of the Estate of Johnnie Mae Chappell, Alonzo Chappell, Martha Bowden [sic], Ruthie Montero, Jackie Williams, Ernest Chappell and Shelton Chappell demand judgment against the Defendants Wayne M. Chessman, Elmer Cato, J. W. Rich, James Alex Davis, Dale Carson, individually and in his former capacity as Sheriff of Duval County, Florida, and Nathaniel Glover in his official capacity as Sheriff of Duval County, Florida and successor of former Sheriff Dale Carson, for punitive damages, the costs of this action, attorneys' fees, and such and other relief as may be just and equitable in the premises.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all issues so triable in this cause.

* * *

[1] UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

SHELTON CHAPPELL, etc., et al.	:	CASE NO. 3:00-cv-313-J-20HTS
Plaintiffs	:	
-vs-	:	
J. W. RICH, et al.	:	Courtroom Number One
	:	10:30 a.m.
Defendants.	:	May 30, 2001
. . . . .	:	

TRANSCRIPT OF STATUS
CONFERENCE PROCEEDINGS
before
THE HONORABLE HARVEY E. SCHLESINGER
United States District Judge

APPEARANCES:

For the Plaintiffs:
WILLIAM T. LASSITER, JR., Esquire
720 North Ocean Street
Jacksonville, Florida 32202

For the Defendants:
HOWARD M. MALTZ, Esquire
Office of the General Counsel
City of Jacksonville
117 West Duval Street
St. James Building, Suite 480
Jacksonville, Florida 32202

Court Reporter:
EVELYN G. ALDERMAN, RPR
Post Office Box 244
Jacksonville, Florida 32201

(Proceedings reported by stenography; transcript prepared by computer.)

[2] **PROCEEDINGS**

10:30 a.m. May 30, 2001

THE CLERK: Case No. 00-civ-313, Shelton Chappell, et al. versus J. W. Rich, et al.

If you would stand and introduce yourself for the record.

MR. LASSITER: I'm William Lassiter, and we represent the plaintiffs. This is Forest Hutchinson with my office.

MR. MALTZ: Your Honor, Howard Maltz on behalf of the defendant City of Jacksonville, Glover and Carson, filling in for Mr. Jolly who had a scheduling conflict. I believe one of the other pro se defendants may be here also.

THE COURT: I would like first for the plaintiffs to tell me what civil rights of the plaintiffs were violated in this case according to your allegations, and then after that, you can explain to me how the Statute of Limitations doesn't apply. I'm not satisfied with the motions and the pleadings that have been filed in this particular case, and I question whether this Court has any jurisdiction in this matter.

MR. LASSITER: May it please the Court.

THE COURT: Yes.

MR. LASSITER: Your Honor, in the plaintiffs' complaint we have alleged violations of Sections 1983 –

THE COURT: I know how to read, but you tell me what [3] part of Section – 1983 does not create any rights in and of itself. 1983 says that if the state in some way, or a political subdivision, violates a constitutional right that somebody has, you can sue. So tell me what part of the Constitution has been violated by the allegations that you maintain occurred in this case.

MR. LASSITER: Your Honor, we believe, the plaintiffs believe in this case that there was a policy and a custom promulgated by the Sheriff's Office that was in effect in 1964, in March of 1964, at the time, which was racially based solely because of the race of the decedent in this case, and there was an intentional attempt to cover up the murder of Johnnie Mae Chappell by the Jacksonville Sheriff's Office. And we believe that this policy and custom and the practice of deliberate indifference to the rights of the plaintiffs –

THE COURT: What rights of the plaintiffs?

MR. LASSITER: Judge, the rights of the plaintiffs access to the courts under Section 1981.

THE COURT: They have access to the courts to do what?

MR. LASSITER: When they know to – when they know of a cause of action to –

THE COURT: Well, if somebody shot my mother or my father or my sister or my brother, I would know that they're dead, right?

[4] MR. LASSITER: Yes, sir.

THE COURT: And your sole contention is that because the Jacksonville Sheriff's Office didn't do what you think they should have done, the plaintiffs lost their right to sue. That's basically what you're maintaining.

MR. LASSITER: They were denied their right to sue.

THE COURT: Why were they denied their right to sue? They knew that somebody was murdered, right?

MR. LASSITER: They knew that their mama had been murdered.

THE COURT: So what's wrong with somebody going out and doing like everybody else does in a civil case, and that is you do your own leg work?

MR. LASSITER: Your Honor, if it please the Court, there are many reasons.

Number one, I don't believe that any of the present plaintiffs had reached their majority. Mr. Chappell, for example, Shelton Chappell, was four months old at the time of his mother's death. But we're not suing for the wrongful death of Johnnie Mae Chappell nor are we suing for the murder per se. The lawsuit is over the conspiracy to cover up that murder.

THE COURT: And what are the damages that they've suffered?

MS. LASSITER: Your Honor, the damages they have [5] suffered since March of 1964 are that the entire childhood that they spent growing up, in Shelton Chappell's case, ten foster homes, has all come back to him, the whole reason for all of this has been revisited upon him,

and the same is true with all of the other members of the family.

The mother in this case, the evidence will show if we get to court, get to trial, that the mother was the protector of the family. I can assure the Court that there will be extensive damages presented to the Court because of the loss –

THE COURT: Of the mother?

MR. LASSITER: – of the mother, yes, sir.

THE COURT: Well, you just told me you weren't suing because of the loss of the mother.

MR. LASSITER: Your Honor, they were deprived of their access to the courts to determine, number one, only one of the individual defendants was prosecuted. The charges were dropped against the other three.

If they had known of any conspiracy to cover up the murder in the first place, they would have been able to inquire, through the courts, as to why this occurred.

THE COURT: As to why what occurred, the murder?

MR. LASSITER: No, sir, the cover-up.

THE COURT: Suppose that somebody commits a crime, no question about it, and there is great evidence that a crime [6] has been committed, but for some reason the prosecutor, in the exercise of his or her prosecutorial discretion, says, I'm not going to charge that individual. Do you think that there's a cause of action to sue civilly?

MR. LASSITER: No, sir, because I don't believe that this started with the prosecutor, to bring the analogy full square to our case, Your Honor.

THE COURT: Suppose the police officer doesn't do his job in conducting the proper investigation so the prosecutor never knows who it is that should be charged. Do you think there's a civil cause of action?

MR. LASSITER: If that police officer intentionally halted a murder investigation, if he intentionally hid evidence and if he intentionally, after the fact, destroyed or removed files to prohibit anybody else from finding out, yes, sir, I believe there's a cause of action under the Civil Rights statutes.

THE COURT: Do you have any cases that say that?

MR. LASSITER: Yes, sir. I'm not prepared – I don't have them with me. I didn't bring my law file. But I believe that we've mentioned some of them in our Memorandum of Law.

Please the court, if I may ask Mr. Hutchinson –

THE COURT: Yes.

MR. LASSITER: (Conferring.)

* * *

[21] **CERTIFICATE**

STATE OF FLORIDA)
)
COUNTY OF DUVAL)

I hereby certify that to the best of my knowledge and belief the foregoing transcript is a true and correct transcription of my stenographic notes and electronic tape recording made at the time and place specified herein.

WITNESS my signature and official seal at Jacksonville, Duval County, Florida, this 1st day of June A.D., 2001.

/s/ Evelyn G. Alderman
EVELYN G. ALDERMAN, R.P.R.,
Official Court Reporter